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Decision

Matter of: California Pacific Associates

File: B-294563

Date: October 26, 2004

Alan M. Grayson, Esq., Victor A. Kubli, Esq., and James A. McMillan, Esq., Grayson & Kubli, for the protester.

Robert H. Koehler, Esq., Patton Boggs, for Washington Beef, LLC, and Harvey J. Nathan, Esq., Sidley Austin Brown & Wood, for Tysons Fresh Meats, Inc., intervenors.

Elliot J. Clark, Esq., Defense Commissary Agency, for the agency.

Sharon L Larkin, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's challenge to the evaluation of its proposal is denied, where record reflects that the agency reasonably evaluated proposal under the technical and past performance factors; the fact that protester is incumbent providing services to two of the four areas required by solicitation does not, in and of itself, require that protester be awarded maximum points under evaluation scheme.

DECISION

California Pacific Associates (CalPac) protests the award of Defense Commissary Agency contracts to Tysons Fresh Meats, Inc. and Washington Beef, LLC, under request for proposals (RFP) No. HDEC02-04-R-0001, for the provision of fresh and frozen beef and pork products to United States military commissaries in Far East Asia and Guam. CalPac challenges the evaluation of its proposal.

We deny the protest.

The RFP provided for a fixed-price award to service Guam and Korea and a fixed-price award to service Japan and Okinawa; each for a 1-year base period with two 1-year options. The awards were to be made on a best-value basis, considering technical capability, past performance and price. The first two factors were equally

weighted (worth 110 points each), and combined were equal in importance to price. The RFP identified four technical capability subfactors (experience, distribution plan, quality control, and logistical management support/transition approach) and four past performance subfactors (timeliness of deliveries, conformance with specification, customer satisfaction, and business relations). The first three technical and past performance subfactors were equally weighted, with the fourth stated to be “slightly less important” than the others. RFP at 51, 67.

The RFP designated a distribution method of either “source loading” or “cross-docking” for each of the delivery areas. “Source loading,” which is required for Guam, Korea, and Okinawa, means that pork and beef products are loaded into a container without being co-mingled with other products, and the container is not opened and product is not transferred until delivered to its overseas destination. “Cross-docking” contemplates the transfer of beef or pork from one container to another in order to combine several small orders to fill a container. For Japan, cross-docking is required for deliveries to Iwakuni, and either cross-docking or source loading can be used for the remaining Japanese destinations (Misawa, Yokota, Yokusuka, Sagamihara, and Atsugi). Source loading is required for Guam, Korea, and Okinawa. RFP, amend. 5, at 2.

CalPac is the incumbent contractor currently servicing the Japan and Okinawa commissaries under a resale ordering agreement with different terms and conditions from that required by the RFP. Washington Beef is the incumbent contractor currently servicing the Guam and Korea commissaries under a similar resale ordering agreement. Both of these firms, and Tysons, responded to the RFP with proposals to service all four areas covered by the RFP. All proposals were found to be in the competitive range.¹ The agency held multiple rounds of discussions with each offeror, and rated final proposals as follows:

¹ A fourth offeror also responded to the RFP; however, the evaluation of its proposal is irrelevant to this decision and is not discussed here.

| | | CalPac | Tyson's | Washington Beef |
|---------------------------|---|-----------------|-----------------|-----------------|
| Technical Capability | | | | |
| | Experience (30 pts.) | 28 | 27 | 28 |
| | Distribution Plan (30 pts.) | 24 | 28 | 28 |
| | Quality Control (30 pts.) | 26 | 27 | 27 |
| | Logistical Management Support/Transition Approach (20 pts.) | 19 | 19 | 18 |
| | SUBTOTAL (110 pts) | 97 | 101 | 101 |
| Past Performance | | | | |
| | Timeliness (30 pts.) | 27 | 25 | 27 |
| | Conformance with Specifications (30 pts.) | 28 | 25 | 28 |
| | Customer Satisfaction (30 pts.) | 26 | 25 | 26 |
| | Business Relations (20 pts.) | 18 | 18 | 17 |
| | SUBTOTAL (110 pts.) | 99 | 93 | 98 |
| Combined Score (220 pts.) | | 196 | 194 | 199 |
| Price (Guam and Korea) | | \$26,432,811.90 | \$25,003,658.13 | \$25,433,562.66 |
| Price (Japan and Okinawa) | | \$34,302,494.58 | \$34,398,319.98 | \$32,784,453.42 |

Agency Report (AR), Tab 17, Technical Evaluation Report; Tab 18, Source Selection Decision, at 19, 22.

For each offeror's proposal, the subfactor point scores equated to an adjectival rating of "very good" (which was the highest possible rating), except for CalPac's score for distribution plan and Washington Beef's score for business relations, which warranted the next highest adjectival rating of "good."² CalPac's proposal received a lower score for its distribution plan based on the fact that it relied heavily on cross-docking, which the agency found "may expose [perishable products] to excessive handling practices and uncontrolled variations in temperature, [and] additional stress is added to the product shortening the shelf life." AR, Tab 18, Source Selection Decision, at 20, 23. In this regard, the agency found that Tyson's' and Washington Beef's distribution plans, which did not rely as heavily on cross-docking, were "stronger." However, the agency found "no distinguishing differences" under the remaining technical capability subfactors, although there were minor differences in point scores, and found that the past performance records

² For subfactors with the maximum value of 30 points, a point score of 25-30 points warranted a very good rating, while a score of 21-24 warranted a good rating. For subfactors with a maximum value of 20 points, a point score of 18-20 warranted a very good rating, while a score of 15-17 warranted a good rating. AR, Tab 4, Evaluation Plan, at 4, 10.

for all three offerors were “very good.” Id. at 20-23. The agency therefore rated each offeror’s proposal “very good” overall.

Given that all three offers were rated “very good,” the agency concluded that there was “no meaningful differences between technical proposals,” and thus price became the discriminating factor for award. Id. at 20, 22. The agency awarded the contract for Guam and Korea to Tysons (which submitted the lowest priced offer for those areas), and awarded the contract for Japan and Okinawa to Washington Beef (which submitted the lowest priced offer for those areas). This protest followed.

CalPac contests the evaluation of its proposal under two technical capability subfactors (distribution plan and experience) and the past performance factor.³ Where an evaluation is challenged, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency’s judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 6.

Under the distribution plan subfactor, as noted above, the agency found CalPac’s proposal slightly inferior to that of Tysons and Washington Beef based on CalPac’s heavy reliance on cross-docking, which the agency found could result in shortened shelf life. CalPac contends that this conclusion is unreasonable because it promised to fully comply with the requirements for source loading where that distribution method was required and, and for the other areas, the RFP required cross-docking or left it to the offeror’s discretion as to which distribution method to use. The agency responds that CalPac’s proposal lacked the details necessary for the agency to “conclusively conclude” that the firm would comply with the agency’s shipping requirements, even after several rounds of discussions. Specifically, the agency was concerned that CalPac’s responses focused more on what the firm was currently doing under a different set of requirements, than on how it would meet the distribution requirements of the RFP. As an example, the agency notes that CalPac continued to “explain the requirement to cube out” and “maximize” container capacity, which is not a requirement of the RFP, but is something that CalPac currently does under its incumbent contract. AR, Tab 17, Technical Evaluation Report, CalPac, at 1-2; Agency Reply to Protester’s Comments at 5-6. Based on our

³ CalPac also initially challenged the evaluation of its proposal under the quality control subfactor of the technical capability factor, but abandoned this argument when it failed to respond in its comments after the agency addressed this issue in its agency report. See Planning Systems, Inc., B-292312, July 29, 2003, 2004 CPD ¶ 83 at 6.

review of the record, we find that the agency's concerns are reasonable and support a less than maximum score under this subfactor.⁴

Under the experience subfactor, CalPac contends that it is entitled to maximum points based on its successful performance as an incumbent. However, as noted above, CalPac's incumbent experience pertains to only two of the four services areas required by the RFP. In addition, the agency was concerned that CalPac did not fully recognize the differences between the current requirements and those required by this RFP. For example, the agency notes that CalPac's proposal failed to distinguish the change in ordering methodology from "cattle pack" to "primal and sub-primals," which allows the meat departments in each store to order only those meat cuts that are needed, and did not recognize the shifting of ordering responsibility from the contractor to store personnel. In addition, the pricing structure under the RFP is fixed-price, which is different from the pricing structure under CalPac's resale ordering agreement that allows the firm to make price adjustments. We find that these considerations provide a reasonable basis not to award CalPac's proposal maximum points under this subfactor.

Finally, CalPac challenges its point scores under each past performance subfactor, again arguing that its performance as the incumbent for two of the four areas entitles it to a maximum score. However, the agency considered this performance, as well as CalPac's performance on other relevant contracts, noting that contract references rated CalPac's performance "from average to excellent." The agency concluded that, since CalPac did not receive the highest ratings in all instances, it was not entitled to the maximum score under the subfactors (although the firm did receive the highest adjectival rating available, which was "very good"). To further explain, the agency noted customer comments reflecting that CalPac substituted products in some instances, or delivered pork product with spinal cord, and CalPac representatives were sometimes hard to reach. Although CalPac apparently disagrees that these customer comments warrant less than the maximum score under these subfactors, the protester's disagreement with the agency's evaluation judgment does not show that the agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3. Given the reference responses, we cannot find the assessment of less than maximum scores unreasonable.

⁴ CalPac also argues that even if it relies more heavily on cross-docking, its distribution plan score is unreasonably low compared to Tysons because CalPac proposed a shelf life guarantee for beef products of 60 days, whereas Tysons proposed a guarantee of only 45 days (both offerors offered the same guarantee for pork products). The guarantee, however, did not alleviate the agency's concern that CalPac's shipping approach would decrease shelf life, or that CalPac's emphasis on maximizing container storage and its current shipping approach did not demonstrate a full understanding of the requirements of the RFP.

In sum, we find no basis to question the agency's assessment of CalPac's proposal and since CalPac does not challenge the evaluation of the awardees' proposals, which received similar scores and ratings,⁵ we find that the agency was reasonable in concluding that the proposals were essentially equal. Given that CalPac's proposal was significantly more expensive than the awardees', we find reasonable the agency's decision to select the lower-priced proposals for award.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Although Washington Beef received a "good" rating for business relations under the past performance factor, while CalPac received a "very good" for this subfactor, the agency explains that that the rating was based on only a 1-point difference between proposals and overall Washington Beef's past performance was considered very good. AR, Tab 18, Source Selection Decision, at 23.